IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6688 of 1995
&
SPECIAL CIVIL APPLICATION Nos.6690 to 6693 of 1995
with
SPECIAL CIVIL APPLICATION Nos. 6722 to 6727/1996
with
SPECIAL CIVIL APPLICATION No. 6668 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDAR NAGRIK SAHAKARI BANK LTD

Versus

MAHESH PRANLAL SHAH

Appearance:

1. Special Civil Application No. 6688 of 1995 &
Special Civil Application Nos. 6690 to 6693 of 1995
MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioner No. 1
MR HARSHAD J SHAH for Respondent No. 1
MR PRAFUL J BHATT for Respondent No. 1

2. Special Civil Application Nos. 6722 to 6727 of 1996
MR HJ SHAH for Petitioner No. 1
MR PJ BHATT for Petitioner No. 1

MR BS PATEL for Respondent No. 1
MRS RANJAN B PATEL for Respondent No. 1

3. Special Civil Application No. 6668 of 1995
MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioner No. 1
MR HARSHAD J SHAH for Respondent No. 1
MR PRAFUL J BHATT for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 23/07/2003

CAV JUDGEMENT

The petitioner bank, i.e. Sardar Nagrik Sahkari Bank Ltd., in Special Civil Application No.6688 and 6690 to 6693/1995 has filed these five petitions under Article 227 of the Constitution of India, challenging the order passed by the Board of Nominee, Vadodara in Lavad Suits Nos.2319/1987 and other matters for recovery of the outstanding amount from the respondents in the respective petitions. The petitioner has also challenged the order passed by the Gujarat State Cooperative Tribunal confirming the order passed by the Board of Nominee, on the issue with regard to maintainability of the respective Lavad Suits before the Board of Nominee. However, the Tribunal has held on merits that the finding given by the Board of Nominee to the effect that the petitioner bank has failed to prove its debt is not correct and it requires the interference by the Tribunal. Against this finding of the Tribunal, each respondent in the respective petition has filed separate petition before this Court and they are numbered as SCA No.6722/1996 to 6727/1996. Since both these groups of petitions are arising out of similar judgements/orders passed by the Board of Nominee, and common order/judgement passed by the Tribunal, the same are being disposed of by this common judgement.

2) As far as the first group of petitions, namely Special Civil Application Nos.6688 and 6690 to 6693/1995 is concerned, the brief facts giving rise to the present petitions are that the petitioner bank had filed Lavad case No.2319/1997 and other suits against the respective respondents under Section 96 of the Gujarat Cooperative Societies Act (hereinafter referred to as "the Act") in the Court of learned Board of Nominee, Vadodara for the recovery of Rs.48,462.45 ps. and other amounts in other Lavad cases. The respondent appeared and defended the

suit and ultimately the Board of Nominee dismissed the suit by an order dated 8-11-1993 on the ground that the suit had been filed by the Manager of the petitioner bank, who is not an authorised person to file the suit and the suit is not maintainable.

3) It is stated in the petition that during the pendency of the Lavad case, the Registrar, Cooperative Societies, State of Gujarat passed an order under Section 107 of the Act for the appointment of the liquidator. The said order had been confirmed and ultimately, the liquidator took charge of the petitioner bank. The liquidator preferred an appeal before the Gujarat State Cooperative Tribunal, Ahmedabad under Section 102 of the Act and the Tribunal after considering the evidence in detail came to the conclusion that the liability of the respondent is proved but the Tribunal has dismissed the appeal on the ground that the manager got no authority to file the suit, considering Form "F" annexed to Gujarat State Cooperative Societies Rules, 1965.

4) It is this order of the Tribunal, which is under challenge in the present group of petitions. Mr.B.S.Patel, the learned advocate appearing for the petitioner submitted that the petitioner bank had already produced the resolution under which it was decided to file the suit and in the said resolution, the powers have been conferred on the Accountant, namely, Balwantsinh S.Parmar but it was signed by the manager. He has further submitted that under the provisions of Section 2 (14) of the Act, manager is also an officer of the bank. He has further invited the attention of the Court to the provisions contained in Section 37 of the Act under which, the society/bank is a corporate body having a perpetual succession and has got power to institute and defend the suit and other legal proceedings. The act is silent regarding procedure of filing of the suit or case under Section 96 of the Act. As per the provisions of Civil Procedure Code, more particularly, Order 29 Rule 1 which deals with the matter regarding filing of the suit, reads as under :

"Order 29, Rule 1 :-
Subscription and verification of pleading :-
In suit by or against a corporation, any pleading maybe signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the Corporation, who is able to depose to the facts of the case."

5) On the basis of this Rule, Mr.Patel has submitted

that the manager is equivalent to Secretary in a corporation or he may be said to be a principal officer of the bank and is able to depose to the facts of the case. He has further submitted that the suit filed by the Manager was competent in absence of any negative provision and the provisions of Civil Procedure Code would apply to the proceeding under Section 96 of the Act and it has been made available by ousting the powers of Civil Court under Section 166 of the Act.

6) Mr.Patel has further submitted that appeal under Section 102 of the Act had been preferred by the liquidator and the petitioner being liquidator is entitled to file the appeal under the Act and that is why, for such a technical defect the suit cannot be dismissed.

7) Mr.H.J.Shah, the learned advocate appearing for the respondents in all these matters, on the other hand supported the orders passed by the Tribunal, as well as by the Board of Nominee. He has submitted that the Board of Nominee has rightly dismissed the suit as it was not filed by a duly authorised person of the bank. The suit signed by the person was not authorised and no resolution to that effect was attached along with the plaint of the suit. He has further submitted that as per note No.3 in Form "F" issued under Rule 42 of Gujarat Cooperative Societies Rules, the Resolution is required to be attached along with plaint of the suit and this Rule is mandatory. If any breach is committed in compliance of the said Rules, the suit is not maintainable.

8) In support of his submission, he relied on the decision of this Court in the case of Ambalal Manilal Makwana Vs. Khambhat Taluka Kharid Vechan Sangh Ltd., Kaira & others reported in (1975) XVI GLR page 382, wherein it is held that from the analysis of the scheme of Rule 15 of Gujarat Cooperative Societies Rules, it becomes evident that whatever be the extent of the individual membership, the delegates of this individual members cannot represent a general assembly by majority. The object of rule framing authority in framing Rule No.15 is to see that the interest of the federating societies could not be put to jeopardy by the majority of the individual members. This object, therefore, cannot be allowed to be frustrated by a bye-law, and if that be so, the word "may" in Rule 15 should be read as "shall" or "must". Rule 15 is, therefore, mandatory and not directory.

9) Mr.Shah has further relied upon the decision of

the Honourbale Supreme Court in the case of Cooperative Central Bank Ltd., Vs.Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, reported in AIR 1970 SC, 245, wherein it is held that "the byelaws of a cooperative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of Statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to byelaws of the nature that a cooperative society is empowered by the Act to make. The byelaws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute."

10) Mr.Shah has further relied on the decision of the Honourable Supreme Court in the case of Ran Rani and Others Vs. Delhi Administration and others, reported in AIR 1977 SC 1900, wherein after considering the Rules 24, 25 and 30 of the Delhi Cooperative Societies Rules, it is held that the date of an application, prescription of time for deposit of membership fee and the amount of qualifying share and the filing of the requisite declaration are formalities, which could not be disregarded.

11) Mr.Shah has further invited the attention of the Court to the decision of this Court in the case of Mansukhlal Nandlal Doshi and others Vs. State of Gujarat reported in 1994 (2) 35 GLR 1595, wherein Rule 46 of the Gujarat Cooperative Societies Rules, 1965 was under consideration and the Court held that Rule 46 provides that a copy of interim order made on a ground specified in Clause (A) or Sub-clause (iv) of Clause (C) of Subsection 1 of Section 107 shall be communicated by the registered post. This was considered to be the mandatory requirement and hence, the rule was held to be mandatory one.

12) Mr.Shah has further stated that Rule 41(4) has come up for consideration of this Court in the case of Amrutlal Mangalji Joshi Vs. Arab Timbdi Juth Seva Sahkari Mandali Ltd. & Ors., 1978 (XIX) GLR 20 and in case of Kalyanbaug Cooperative Housing Society Ltd. & Anr. Vs. Rajendraprasad Shyamlal K. & Anr. reported in 2002 (2) GCD 1716, wherein the Court has taken the

view that in violation of Rule 41, which is mandatory, the order passed by the Court below is required to be quashed and set aside.

13) On the basis of the above authorities and factual background of the matter, Mr.Shah has submitted that the Board of Nominee, as well as the Tribunal have rightly decided the matter and this Court while exercising powers under Article 227 of the Constitution of India should not interfere in the matter.

14) As far as the petitions filed by the petitioners in Special Civil Applications No.6722 to 6727/96 are concerned, the main challenge in the petition is against the observations made by the Tribunal in the impugned order to the effect that the claim of the respondent bank against the petitioners in their respective petitions was proved and all the liabilities of the petitioners towards the respondent bank were proved. It is this finding of the Tribunal, which is challenged in this second group of petitions.

15) It is the case of the petitioners in this group of petitions that the finding of the Tribunal to the effect that the claim of the respondent-bank was proved on the basis of certified copy of the entries entered in the books of account of the bank as envisaged by Section 4 of the Bankers' Books Evidence Act, could not have been accepted because the entries in the account of the petitioner as mentioned by the respondent bank were fraudulent one. Mr.Shah, who appears for the petitioners in this second group of petitions submits that mere entries from the bank's books of accounts or mere copies thereof, are not sufficient to charge the person with liability except the person concerned accepts the correctness of the entries. For this proposition, Mr.Shah relied on the decision of the Honourable Supreme Court in the case of Chandradhar Goswami and Ors. Vs. Gauhati Bank Ltd., reported in AIR 1967 Supreme Court 1058. It is submitted by Mr.Shah that the petitioner did not accept the correctness of the entries and at the time of hearing of the suit before the Board of Nominee, the petitioner had taken a specific contention that even though demand was made and the cost was deposited by the petitioner, no documentary evidence has been produced by the bank. He has further submitted that despite the specific allegations about fraudulent entries, made by the petitioners, the respondent bank failed to produce any documentary evidence and original documents like cheques etc. and, therefore, it could not be said that sufficient material was produced on the basis of which

the petitioners could be charged with liability. Mr.Shah has further submitted that the petitioners had never opened any Over Draft Account with the bank and no such facility was granted to the petitioner. He has further submitted that the respondent bank went into liquidation because of the mismanagement on the part of the management of the bank and liquidator was appointed and inquiry was initiated. He has, therefore, submitted that in view of the fact that on account of allegations made by the petitioners regarding correctness of entries and demand of production of original documents and failure on the part of the respondent bank to produce the same, the Tribunal could not have given such findings.

16) Mr.B.S.Patel, the learned advocate appearing for respondent bank in this group of petitions has, however, supported the finding arrived at by the Tribunal. He has further submitted that since these are disputed questions of fact, this Court should not go into the said aspect while exercising powers under Article 227 of the Constitution of India. He has further submitted that certified entries were produced by the bank and, therefore, they were considered to be the conclusive evidence, in view of the provisions contained in Section 4 of the Banker's Books Evidence Act. He has, therefore, submitted that the present petitions filed by the petitioners are required to be dismissed.

17) After having heard the learned advocates appearing for the respective parties and after having gone through the records and documents placed before this Court and after having perused the relevant statutory provisions contained in the Act as well as the Rules and the authorities relied on by respective parties, the Court thinks it fit and proper to interfere in the order passed by the Board of Nominee, as well as by the Tribunal. What emerges from the order of the Board of Nominee is that before filing the present Lavad Suit, the bank has earlier filed the Lavad Suit before the Board of Nominee and the same was dismissed on the ground that since the said suit was not filed by the properly authorised person, the same was not maintainable. Against the said order of the Board of Nominee, an appeal was filed before the Gujarat State Cooperative Tribunal and the Tribunal has directed the Board of Nominee to take evidence and the issue was to be decided after taking evidence in the matter. However, these orders are not placed on the record by any of the parties. In the present orders of the Board of Nominee, there is no finding to the effect that the suit is not maintainable. The Board of Nominee has proceeded on merit of the bank's

claim and has taken the view that since the bank failed to prove its claim the suits were dismissed. The Tribunal thereafter discussed this issue in its order dated 30/11/1994. The Tribunal has decided appeal on the basis that the Board of Nominee has dismissed Lavad Suit of the bank on both the counts, i.e. on maintainability as well as on merits. This presumption drawn by the Tribunal seems to be erroneous as in the order of the Board of Nominee dated 8-11-1993, there was no finding with regard to the maintainability of the suit. Once the issue is concluded by the Tribunal in earlier round of litigation and pursuant to the order of the Tribunal the matter was tried again by the Board of Nominee on merits and once the order of the Tribunal passed in earlier round of litigation has become final and the said order was not taken up further before this Court, it is not permissible for the Tribunal to go into that question again and this Court is, therefore, of the view that the Tribunal was not justified in dismissing the appeal on the ground of non maintainability, despite the fact that the Tribunal decided the appeal on merits in favour of the bank.

18) Even otherwise, there is sufficient force in the argument of Mr.B.S.Patel, the learned advocate appearing for the bank that simply because the plaint of the suit signed by the manager, though he was not authorised to sign, the same cannot be dismissed on the ground that the manager was not a properly authorised person.

19) Section 2 (14) defines the word "officer", which inter alia includes Manager. The manager is an officer of the bank and the suit filed by him is considered to be the suit filed by a duly authorised person. The bank has made the submission that the provisions contained in Section 96 of the Act, permit the bank to raise the dispute in that connection. The powers of the Secretary in the society, as well as the Manager in the bank are more or less same. Rule 42 of the Gujarat Cooperative Societies Rules, 1965 states that a dispute under Section 96 shall be referred in writing in form "F" with suitable modifications as may be necessary and shall be accompanied by (a) certified copy of the relevant portion of the loan ledger if the dispute is a money claim and (b) such other statements or records as are relatable to the dispute or as may be required by the Registrar. Rule 42, thus, refers to form "F" and note appended below the form "F" suggests that a resolution authorising a person to sign the suit is required to be attached. As stated earlier, the resolution was attached along with the plaint of the suit, but in that resolution the Accountant

was authorised to sign, whereas the plaint of the suit was signed by the Manager and on that ground the appeal was dismissed by the Tribunal. However, the Tribunal is not justified in taking such a technical view of the matter and dismissed the appeal.

20) There is also substance in the argument of Mr.B.S.Patel that the appeal is a continuation of the suit and appeal is filed by the liquidator before the Tribunal. Section 110 (a) of the Act empowers the liquidator to institute and defend the suit and other legal proceedings, civil or criminal, on behalf of the society, in the name of his office. Since the appeal is filed by the liquidator on behalf of the bank, there is no question that the appeal, and in turn the Lavad Suit are not filed by properly authorised person.

21) Even under Order 29 Rule 1 of Civil Procedure Code, the principal officer is authorised to sign any pleading or to verify on behalf of the corporation. The bank being a body corporate within the meaning of the Act, the plaint of the suit filed on behalf of the bank can certainly be signed by the Manger, who being the principal officer of the bank.

22) With regard to the proposition that the appeal is a continuation of the suit, this Court has held in the case of Maganbhai Madhavbhai Patel & Ors. Vs. Patel Dhulabhai Chunibhai & Ors. (1979) XX GLR, page 114 as under :

> "It is well settled that appeal is a continuation of the suit. What the highest Court does is to conclusively and finally decide the suit and nothing more. Secondly, with the deprivation of the jurisdiction of the Civil Court in matters relating to the past tenancy of tenants, the High Court exercising the jurisdiction of the Civil Court does not have the jurisdiction now to confirm or set aside the decree for possession on merits. It is, therefore, clear that even though the trial Court had the jurisdiction to pass the decree when it passed it, the subsequent amendment to legislation which governs the pending suits renders that decree null and void. We must go to the extent of saying that in view of the fact that amended Sec.85 A governs the pending suits, the decree passed by the trial Court must be deemed to have been passed without jurisdiction even though the trial Court had the jurisdiction to pass it when it did."

23) With regard to the proposition that the suit filed by the bank cannot be dismissed merely on the ground of technicality, the Honourable Supreme Court in the case of United Bank of India Vs. Nareshkumar reported in AIR 1997 SC, page 3 has held as under :

"Where the Courts came to conclusion that money had been taken by certain parties from bank and certain persons had stood as guarantors and that the claim of the bank was justified it will be a travesty of justice if the bank is to be non suited for a technical reason such as plaint was not signed by competent person which does not go to the root of the matter and the only defect which was alleged on behalf of the parties was on which was curable."

"In cases where suits are instituted or defended on behalf of a public corporation like bank, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable."

"It cannot be disputed that a company like the bank can sue and be sued in its own name. Under Order 6 Rule 14 of the C.P.C. a pleading is required to be signed by the party and its pleader, if any. As a company is juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29, Rule 1 of the C.P.C., therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf

> of the corporation. In addition thereto and dehors Order 29, Rule 1, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded a sufficient compliance with the provision of Order 6, Rule 14. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

24) In view of the above facts, without going into the issue as to whether Rule 42 is mandatory or directory and since Rule 42, itself, permits the reference of dispute under section 96 in form "F" with suitable modifications, this Court is of the view that there is sufficient compliance of the provisions of the Act and Rules and hence, the Tribunal is not justified in holding that the Lavad Suit filed before the Board of Nominee is not maintainable.

25) Since the Court has taken the view that the suit is maintainable and that finding arrived at by the Tribunal is reversed, the question involved in the petitions filed by the persons, who have taken loan facility from the bank is required to be examined. The tribunal has decided on merits in favour of the bank and since there are disputed questions of facts, normally this Court would not go into the said disputed questions of facts, while exercising its power under Article 226/227 of the Constitution of India. However, in the present set of circumstances, these matters are very old and more than 20 years have gone, during which period the bank has gone into liquidation, the persons who have taken loan facility from the bank have died or are not traceable and even if the decree is to be executed against these persons, it is very difficult for the Bank to recover the decretal amount from them. Moreover, in

the second round also, when the matters were sent back to the Board of Nominee by the Tribunal for recording evidence, in view of the appointment of the liquidator and the relevant records not being available, certain records could not be produced before the Board of Nominee and on that ground the suits were dismissed by the Board of Nominee for non-availability of records before it and now after expiry of this much period, if the matters are sent back, no useful purpose would be served.

26) Keeping all these facts into consideration, the learned advocates appearing for the respective parties have also made an attempt to resolve the dispute amicably but the settlement could not be successfully arrived at. Mr.H.J.Shah, the learned advocate appearing for the petitioners in this second group of petitions has made an oral offer on the basis of instructions received from his clients that the petitioners would make payment of Rs.5,000/- being the principal amount and Rs.15,000/being adhoc amount towards interest for all these years without prejudice to their rights and contentions in the petitions. As against this, Mr.B.S.Patel, the learned advocate for the respondent-Bank submitted that the respondent Bank is prepared to accept such amount alongwith interest accrued thereon as if the amount of Rs.5,000/- was invested in Fixed Deposit and maturity value of that deposit would come as on today. Hence, in the interest of justice and looking to the totality of the facts and circumstances of the case, the Court is of the view that without upholding or rejecting the rival contentions raised by the parties on the merits of the matter, and since the original loan amount is of Rs.5,000/- only and suit claim in each of the matters is ranging between Rs.25,000/- to Rs.50,000/-. If the persons taking loan from bank, who are the petitioners in the second group of petitions are directed to pay Rs.20,000/- in each of the petitions in which suit claim is ranging between Rs.25,000/- to Rs.35,000/- and Rs.25,000/- where suit claim is ranging from Rs.35,000/to Rs.50,000/-, to the bank towards full and final settlement of the dues, the same would meet with the end of justice. Accordingly, Court holds that the bank is entitled to recover Rs.20,000/- or Rs.25,000/-, as the case may be, from the petitioners and the petitioners are directed to pay the said amount to the respondent-Bank within one month from the date of receipt of writ from this Court or from the date of receipt of certified copy of the order, whichever is earlier.

It is made clear that if the respondents in the suits fail to make the aforesaid payment within the

period directed by this Court hereinabove, the petitioner-Bank in the petitions shall be entitled to recover the suit claim alongwith interest at the rate of 10% p.a. of the said amount.

It is further made clear that this view is taken by the Court looking to the special facts and circumstances of these cases and in no way, it becomes binding precedent.

27) With the above observations, the first group of petitions i.e. Special Civil Application Nos.6688/1995 and 6690 to 6693/1995 is allowed and Rule made absolute in those petitions, whereas the second group of petitions i.e. Special Civil Application Nos.6722 to 6727/1996 is partly allowed and rule is made absolute to the above extent. However, looking to the facts and circumstances of the case, there will be no order as to costs.

28) This leads me to decide the remaining one petition being Special Civil Application No.6668 of 1995.

29) In Special Civil Application No.6668/1995 the Board of Nominee has rejected the plaint on the ground that the application filed by the bank to bring the legal heirs on record is barred by limitation and hence, the suit is abetted so far as the deceased Piyush Pranlal Shah is concerned. The petitioner-bank has preferred an application Exh.60 in Lavad Suit No.2320/1987. The said application was given on 21st July, 1993. While examining the said application, it is found that in the earlier round of litigation, the Tribunal has remanded the matter on 14-12-1987 and pursuant thereto, the Board of Nominee has issued notice on 2-2-1988 directing the defendant to remain present in the Court. However, the said notice has come back unserved with an endorsement "died". Thereafter, the matter was placed before the Board of Nominee on 3-3-1988, 5-4-1988, 6-5-1988, 7-7-1988, 8-8-1988 and 9-2-1988. The plaintiff-bank's advocate was present on all the occasions and the matter was specially kept for bringing the legal heirs on record and yet no application was given and thereafter, for the first time the application was given on 21st March, 1990. However, the Board of Nominee has not accepted that the plaintiff bank's contention raised that the Bank came to know about the death of the deceased only on the last date and came to the conclusion that the plaintiff-bank was knowing about it for the last five years and since the application was to be preferred within 90 days from the death of deceased and since the same was not done,

the suit was abetted so far as defendant was concerned.

30) The above order was challenged by the bank before the Tribunal and the Tribunal has also confirmed the order of the Board of Nominee and dismissed the appeal.

31) Being aggrieved and dissatisfied with the said order of the Tribunal, the present petition was filed before this Court. Mr.B.S.Patel, the learned advocate appearing for the petitioner submitted that under the provisions of Section 99 of the Act and Rule 41 of the Gujarat Cooperative Societies Rules, 1961, the nominees conferred with the power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence and to compel the production of documents by the same means and as far as possible in the same manner as provided in Civil Procedure Code and under Rule 41 the power under Order 9 of Civil Procedure Code has been conferred except that the provisions of Civil Procedure Code are not applicable even though by no stretch of imagination, it can be said that provisions of Order 23 of Civil Procedure Code has been conferred on Nominee deciding the dispute under Section 93 of the Act.

32) It is further stated that under the provisions of Section 97, the limitation is prescribed which starts with non-obstante clause. The period of limitation in the case of dispute referred to the Registrar, under Section 96 has been provided and the dispute raised by the petitioner - bank against the deceased Piyush Pranlal Shah was filed within the purview of Section 91 (a) and hence, the provisions of Article 120 of the Limitation Act was not applicable but without considering the same, the tribunal has passed the order and dismissed the application of the petitioner. Mr.Patel has, therefore, submitted that Limitation Act is not applicable to the dispute raised under Section 96 of the Act as the question of limitation is governed by the provisions contained in Section 97 to 99 of the Act. He has further submitted that the technicality should not prevail over the substantial justice, which is to be dispensed with in favour of the person seeking redressal of the dispute. The Court is always liberal to bring the legal heirs on record and even if there is delay, the same is required to be condoned in the interest of justice.

33) However, looking to the facts and circumstances of the case and looking to the settled position of law, this Court is of the view that both the authorities below were not justified in dismissing and/or confirming

dismissal order, merely on the ground of limitation. This petition is, therefore, allowed. Rule is made absolute with no order as to costs.

23.7.2003 (K.A.Puj, J.)
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